



39TACD2023

Between

████████████████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ██████████ (“the Appellant”) against Notices of Amended Assessment to Income Tax issued by the Revenue Commissioners (“the Respondent”) for the years 2016 and 2017, in the sum of €30,101 and €30,493 respectively.
2. The liabilities arose as the Respondent assessed the Appellant as being the recipient of Farm Payment Entitlements, namely the Basic Payment Scheme entitlements (“BPS”) paid by the Department of Agriculture, Food and Marine (“DAFM”), and which have not been included in the Appellant’s income tax returns for the years 2016 and 2017.
3. The core issue in this appeal is whether the BPS entitlements paid by the DFAM, during the years under appeal, are taxable as income in the hands of the Appellant, as contended by the Respondent, or are instead taxable as income received by a Company formed, owned and managed by the Appellant and his brother, namely ██████████
██████████ (“the Company”), as contended by the Appellant.

4. On 16 December 2021, the Appellant duly appealed to the Commission. The appeal proceeded by way of a hearing on 6 December 2022. The Appellant was represented by [REDACTED] Tax Advisor and the Respondent was represented by Junior Counsel. The Appellant gave sworn oral evidence in respect of his appeal and the parties' representatives made submissions.

Background

5. The Appellant owns lands at [REDACTED], which he previously farmed. In 2005, the Appellant and his brother decided to carry on the trade of farming through the vehicle of a limited liability Company and the Company was incorporated, some 17 years ago for the purpose of farming. Both the Appellant and his brother are Directors of the Company. The Appellant has a 50% shareholding in the Company.
6. The Appellant contends that since 2005, all farming activities are carried out through the Company. A Licence is granted by the Appellant to the Company on an annual basis for the purpose of grazing sheep and cattle only. A copy of said Licence Agreement dated 1 January 2016, is submitted at page 113 of the Respondent's bundle of documents. It provides for the number and breakdown of acres that form part of the Licence Agreement at the cost of €25,000 per year. Further, the terms of the said Licence Agreement set out *inter alia* that "*the licence includes the right to utilise any basic Payment Scheme entitlements attached to the said lands*".
7. Teagasc, the Agriculture and Food Development Authority, is the national body providing integrated research, advisory and training services to the agriculture and food industry and rural communities. It was established in September 1988 under the Agriculture (Research, Training and Advice) Act, 1988¹.
8. Teagasc was engaged on behalf of the Appellant to process and submit the online application for the BPS entitlements to the DFAM. The application was completed and filed online by an employee of Teagasc. A copy of said application form for 2016 and 2017 is submitted in the Respondent's bundle of documents at page 91 and 98 respectively. The documents show that the application was submitted in the name of the Appellant and his brother, as opposed to the Company.
9. Notwithstanding the names on the application form, the DFAM made the BPS entitlement payments to the bank account of the Company and the Appellant did not receive the BPS entitlement payments to his bank account, for the years under appeal. A copy of the

¹ <https://www.teagasc.ie/about/>

Company's bank account statements, evidencing the BPS entitlement payments, have been submitted at page 87 in the Respondent's bundle of documents. The amount of BPS entitlements paid to the Company for the years under appeal are set out below as follows:-

2016	€78,047.01
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2017	€76,388.53
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10. The Respondent contends the Appellant did not inform the DFAM that the lands formerly farmed by the Appellant, were now being farmed by the Company, and that those lands had been licensed to the Company. The Respondent submits that an application can be made annually to the DFAM to transfer the BPS entitlements, but that the application was never completed and the Company was never registered as the transferee of the BPS entitlements. Reference was made to the Basic Scheme Transfer of Entitlements 2018 Terms and Conditions which provide for such transfers. The Respondent provided the document to the Commissioner and the Appellant at the hearing of the appeal.
11. On 26 April 2019, the Respondent issued a Notification of Revenue Audit to the Appellant in relation to his books and records. The scope of the audit was all relevant taxes and duties for the years 2016 and 2017. Both the notification and correspondence that ensued between the parties is submitted in the Respondent's bundle of documents to this appeal beginning at page 56, and which has been considered by the Commissioner.
12. On 13 December 2019, the Appellant's Agent wrote to the Respondent to state that the Appellant had not transferred the BPS entitlements to the Company, as the rights to utilise any entitlements were granted in the licence agreement signed on a yearly basis. The Appellant's Agent further stated in the same correspondence that the BPS entitlements had to be fully used by the licensee along with the lands or they would be lost.
13. On 4 November 2021, the Respondent corresponded with the Appellant to state that the BPS entitlement payments received in 2016 and 2017, were taxable on the Appellant personally, as the BPS entitlements had never been transferred to the Company. In addition, the Respondent outlined in the same correspondence that amended assessments reflecting this position, would be raised accordingly.
14. The Appellant's case is that the BPS entitlement payments were received and used by the Company and were declared by the Company as income in its Corporation Tax returns for the years under appeal.

Legislation and Guidelines

15. The legislation relevant to this appeal is as follows:-

16. Section 18(1) TCA 1997, Schedule D, inter alia provides:-

(1) The Schedule referred to as Schedule D is as follows:

SCHEDULE D

1. Tax under this Schedule shall be charged in respect of –

(a) the annual profits or gains arising or accruing to –

(i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,

(ii) any person residing in the State from any trade, profession or employment, whether carried on in the State or elsewhere,

(iii) any person, whether a citizen of Ireland or not, although not resident in the State, from any property whatever in the State, or from any trade, profession or employment exercised in the State, and

(iv) any person, whether a citizen of Ireland or not, although not resident in the State, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State,

and

(b) all interest of money, annuities and other annual profits or gains not charged under Schedule C or Schedule E, and not specially exempted from tax,

in each case for every one euro of the annual amount of the profits or gains

.....

(2) Tax under Schedule D shall be charged under the following Cases: Case I – Tax in respect of –

(a) any trade

.....

Case IV – Tax in respect of any annual profits or gains not within any other Case of Schedule D and not charged by virtue of any other Schedule;

Submissions

Appellant

17. The Commissioner sets out hereunder, a summary of the evidence given by the Appellant:-

- (i) He said that he is the owner of approximately 300 acres in [REDACTED]. He mentioned that he set up a Company with his brother in 2005, with the purpose of farming the lands. He said that he put in place a Licence Agreement rather than a Lease Agreement, as the bank insisted on this. He said that at that time, it was quite unique, that a farmer would establish a limited liability Company for the purpose of farming, and that the DFAM and other farmers were watching with interest. He mentioned that he had instructed his Solicitor to prepare the Licence Agreement. His evidence was that he signed the Licence Agreement on behalf of himself and the Company, hence the reason for one signature only on the document. He said that he is one person performing 2 roles.
- (ii) He stated that he engaged Teagasc to assist with the completion and submission of the forms for the BPS entitlements, as he was not good with computers. His evidence was that the employee of Teagasc was someone known to him for a long time, who he trusted and who applied for the BPS entitlements without too much input from him. He said that the Teagasc representative was like a member of the family and had all the information required about his business.
- (iii) He said that when looking at the application form in the Respondent's bundle of documentation, he can see that the entitlements were applied for in his name and the name of his brother, but that it should have been in the name of the Company. He said that he did not want to blame anyone for the error, but it is nonetheless an error. He confirmed that he did not check or sign the application prior to submission and that the DFAM was aware that the entitlements were in the name of the Company, and in fact, the BPS entitlement payments were made to the Company. He confirmed that he never received the BPS entitlement payments to his bank account.
- (iv) In cross-examination, the Appellant confirmed that the Company had applied for a herd number which was an amalgamation of both his own and his brother's herd numbers. He said that a herd number is incredibly hard to achieve and that it was imperative that the Company had one. He referred to the application form for the BPS entitlements and to the single herd number affixed to same. In addition, he

confirmed that this was done in the years following the establishment of the Company. However, he said that given the passage of time, some 18 years, he had no documentation to support his contention that the herd numbers were amalgamated.

- (v) He argued that in order to be eligible to receive the BPS entitlements, a farmer must be exercising an “agricultural activity”. As he was no longer a “farmer” undertaking an “agricultural activity” he was not entitled to receive the BPS entitlement payments for the periods in question, rather it was the Company that had the entitlement to the BPS entitlement payments. He said that he did not have a right to receive the payment from the DFAM but that the Company, being a farmer engaging in agricultural activity, did have such an entitlement.
- (vi) He said that he understood that the DFAM was aware that it was the Company that was entitled to the BPS payments, following the establishment of the Company and the amalgamation of the herd numbers. He did not accept that a formal application to transfer the BPS entitlement from him to the Company was required to be submitted. He said that he was sure that the DFAM knew it was the Company. In addition, he argued that the Licence Agreement provides the Company with the right to utilise the BPS entitlement payments.
- (vii) He said that he has paid tax on the payments through the Company and does not understand how such payments can be attributed to him personally.

18. The Appellant’s Agent made the following submissions. A summary of the submissions made are set out hereunder:-

- (i) The Appellant is no longer carrying out the activities of farming and it is the Company that is engaged in farming activity. Therefore, the Appellant is not eligible to receive the BPS entitlement payments, as he is not an active farmer, it is the Company who is the active farmer.
- (ii) Prior to 2005, the Appellant and his brother had separate herd numbers. In the years 2003 to 2005, the herd numbers were amalgamated and the herd number now relates to the Company and not the Appellant.
- (iii) The Company was established in 2005. A licence is granted annually by the Appellant to the Company, so that the lands can be used by the Company for the grazing of sheep and cattle. A Licence Agreement was insisted upon by the Bank rather than a Lease Agreement. The terms of the said Licence Agreement gave the Company the right to utilise the BPS entitlements attached to the lands. In

addition, the licence fee in the sum of €25,000, was included in the Appellant's tax return and income tax paid thereon.

- (iv) A representative of Teagasc assisted with completion and submission of the online application form for the BPS entitlements. It was never reviewed or signed by the Appellant. The application should have reflected the name of the Company and not that of the Appellant and his brother.
- (v) No BPS entitlement payments were ever received by the Appellant and payment of the BPS entitlements were made to the bank account of the Company, for use by the Company. The Respondent should follow the money, rather than the name on the form.
- (vi) The rules governing BPS entitlements state that the payments are made to a farmer and a person carrying on an agricultural activity. Therefore, it was the Company that was assessable, not the Appellant.
- (vii) The Determination in 79TACD2021 can be distinguished, such that the Company in that appeal never held a registered herd number and the Appellants received the payment of the entitlements into their bank account. However, in the within appeal, BPS entitlement payments were made to the Company and the Company holds a herd number.
- (viii) The decision *J D Dolan (Inspector of Taxes) v "K" National School Teacher I ITR 656* can be distinguished, in circumstances where the professed Nun, having receipted the pay orders issued to her, handed them to her religious Superiors who arranged for the cashing thereof and the proceeds were credited in the books of the order as income of the order. In the Appellant's appeal, no such transfer of payment occurred in relation to the BPS entitlement payment, as the payments were made directly to the Company.
- (ix) The BPS entitlement payments were received and used by the Company and were declared by the Company as income in its Corporation Tax returns for the years under appeal.
- (x) The charge to income tax in the Notice of Amended Assessments are the aggregate of entitlements for both brothers and not just the Appellant's alone.

Respondent

19. Counsel on behalf of the Respondent made the following submissions. A summary of the submissions made are set out hereunder:-

- (i) Reference was made to the decision in *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49 and that the burden of proof in a tax appeal lies with the Appellant.
- (ii) Reference was made to the Determination in 79TACD2021 and that it is factually similar to the within appeal. Reference was made to a Licence also being held in that appeal. However, it was submitted that the language in the Licence Agreement in Determination 79TACD2021 was an “*entitlement to claim*” rather than “*utilise*” which is stronger language. Nevertheless, the Appellant was not successful in that appeal.
- (iii) The correspondence dated 13 December 2019, from the Appellant’s Agent to the Respondent, at page 65 of the Respondent’s bundle of documents, confirms that the BPS entitlements had not been transferred by the Appellant to the Company.
- (iv) Reference was made to Regulation (EU) No 1307/2013 of the European Parliament and the Council of 17 December 2013 (“the Regulation”) which establishes rules for direct payments to farmers under the support schemes within the framework of the common agricultural policy. In particular, reference was made to Article 4, 9, 21, 32 and 33 as follows:-

Article 4

“Definitions and related provisions”

(a) “farmer” means a natural or legal person, or a group of natural or legal persons, regardless of the legal status granted to such group and its members by national law, whose holding is situated within the territorial scope of the Treaties, as defined in Article 52 TEU in conjunction with Articles 349 and 355 TFEU, and who exercises an agricultural activity;

(c) “agricultural activity” means:

(i) production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes,

(ii) maintaining an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural

methods and machineries, based on criteria established by Member States on the basis of a framework established by the Commission, or

(iii) carrying out a minimum activity, defined by Member States, on agricultural areas naturally kept in a state suitable for grazing or cultivation;

Article 9

“Active Farmer”

(1) No direct payments shall be granted to natural or legal persons, or to groups of natural or legal persons, whose agricultural areas are mainly areas naturally kept in a state suitable for grazing or cultivation and who do not carry out on those areas the minimum activity defined by Member States in accordance with point (b) of Article 4(2);

Article 21

Payment entitlements

1. Support under the basic payment scheme shall be available to farmers:

(a) who obtain payment entitlements under this Regulation through allocation pursuant to Article 20(4), through first allocation pursuant to Article 24 or Article 39, through allocation from the national reserve or regional reserves pursuant to Article 30 or through transfer pursuant to Article 34; or

(b) who comply with Article 9 and hold owned or leased-in payment entitlements in a Member State which has decided, in accordance with paragraph 3, to keep its existing payment entitlements.

Article 32

Activation of payment entitlements

1. Support under the basic payment scheme shall be granted to farmers, by means of declaration in accordance with Article 33(1), upon activation of a payment entitlement per eligible hectare in the Member State where it has been allocated. Activated payment entitlements shall give a right to the annual payment of the amounts fixed therein, without prejudice to the application of financial discipline, of reduction of payments in accordance with Article 11 and of linear reductions in accordance with Article 7, Article 51(2) and point (c) of Article 65(2) of this Regulation, and to the application of Article 63 of Regulation (EU) No 1306/2013.

Article 33

Declaration of eligible hectares

- (1) *For the purposes of the activation of payment entitlements provided for in Article 32(1), the farmer shall declare the parcels corresponding to the eligible hectares accompanying any payment entitlement. Except in the case of force majeure or exceptional circumstances, the parcels declared shall be at the farmer's disposal on a date fixed by the Member State, which shall be no later than the date fixed in that Member State for amending the aid application as referred to in Article 72(1) of Regulation (EU) No 1306/2013.*
- (2) *Member States may, in duly justified circumstances, authorise the farmer to modify his declaration provided that he maintains at least the number of hectares corresponding to his payment entitlements and respects the conditions for granting the payment under the basic payment scheme for the area concerned.*
- (v) The BPS entitlements are held by the Appellant and not the Company. All documentation supports this view being taken. What is relevant is not the person that accepts payment, but the person that is entitled to receive the BPS entitlement payments, which in this appeal is the Appellant.
- (vi) No evidence has been submitted that the Company was entitled to receive the BPS entitlement payments and the Appellant's representatives have accepted that the transfer of the BPS entitlements was not made.
- (viii) Reference was made to the decision in *J D Dolan (Inspector of Taxes) v "K" National School Teacher*. The mere fact that a taxpayer does not apply his income for his own benefit does not excuse him from paying tax on it.
- (ix) The BPS entitlements may only be transferred/leased to another farmer in the same Member State. The transferor and transferee must apply to transfer entitlements by completing the Transfer of Entitlement application form. Reference was made the Basic Scheme Transfer of Entitlements 2018 Terms and Conditions which provide for such transfers.
- (x) In order to have the BPS entitlement payments considered the income of the Company, the Appellant was required to register the herd number and the BPS entitlements in the name of the Company. There is no evidence that this has been done by the Appellant.

- (xi) The Respondent has now amended the Corporation Tax assessments in relation to the Company, so as to reflect the Respondent's view that the BPS entitlement payments were taxable in the hands of the Appellant and not in the hands of the Company.

Material Facts

20. Having read the documentation submitted, and having listened to the oral submissions at the hearing, the Commissioner makes the following findings of material fact:-

- (i) The Appellant owns lands at [REDACTED] which he previously farmed up and until 2005.
- (ii) In 2005, the Appellant and his brother established the Company. The Appellant is a Director of the Company and 50% Shareholder.
- (iii) The Company was incorporated 17 years ago and the Notices of Amended Assessment to Income Tax relate to the tax years 2016 and 2017, some 11 years subsequent to the incorporation of the Company.
- (iv) The Appellant granted a Licence to the Company on an annual basis, for an annual rent of €25,000, the said terms of which Licence Agreement provided *inter alia* for the grazing of cattle and sheep.
- (v) A term of said Licence Agreement includes the right to utilise any BPS entitlement attached to the lands.
- (vi) The Licence Agreement was renewed annually.
- (vii) The Appellant had the benefit of legal advice in relation to the Licence Agreement. The Appellant has also had the benefit of a Tax Advisor and a representative of Teagasc to assist him.
- (viii) The Appellant is no longer an active farmer nor is he carrying on the farming activity. Rather, it is the Company that is carrying on the farming activity.
- (ix) Teagasc were engaged to process and submit the online application for the BPS entitlements.
- (x) A representative of Teagasc submitted the BPS entitlement application form for the years 2016 and 2017, in the name of the Appellant and his brother and not in the name of the Company.

- (xi) The BPS entitlements were paid by the DFAM to the Company's bank account and not the bank account of the Appellant.
- (xii) The Lease or rental of BPS entitlements requires that a formal transfer take place on a Transfer of Entitlement application form, in accordance with the Regulation and the Basic Scheme Transfer of Entitlements Terms and Conditions.

Analysis

21. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, at paragraph 22, Charleton J. stated

"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable".

22. What is at issue in this appeal is whether the BPS entitlements paid by the DFAM are taxable as income in the hands of the Appellant or are instead taxable as income received by the Company. The Respondent contends that it is the person who has the right to the BPS entitlement that is taxable, rather than the recipient of the payments.

Matters not in dispute between the Parties

23. The Commissioner notes that it is not in dispute between the parties that a Company was established in 2005, by the Appellant and his brother, for the purpose of the Company undertaking farming activities on the lands owned by the Appellant. The Commissioner accepts as a material fact that the Company was established for that purpose and that from 2005 onwards, the farming trade formerly carried on by the Appellant, was thereafter carried on by the Company. The Appellant gave detailed testimony as to the establishment of the Company and the Commissioner notes the Appellant's direct evidence namely, at that remove, it was highly unusual that a farmer would establish a Company to carry on the farming trade.

24. Further, it is not in dispute between the parties that a Licence Agreement was entered into on an annual basis with the Appellant and the Company. The Respondent queried the manner in which the Licence Agreement was executed, such that it contained only the Appellant's name on the signature page and should have more properly reflected a

signature “*for and on behalf of the Company*”. The Appellant’s evidence was that he signed the Licence Agreement in the capacity of both owner of the lands and a Director of the Company. He mentioned that he had engaged a Solicitor to draft the Licence Agreement. The Commissioner accepts the evidence of the Appellant in this regard and whilst less than ideal, in terms of the execution of a formal legal document, the Commissioner is satisfied that it was the intention of the Appellant that the farming business was being transferred to the Company, to carry on the farming trade.

25. The Commissioner has considered the wording of the Licence Agreement. In particular, the Commissioner has considered the wording of the terms of said Licence Agreement wherein it provides that “*the license includes the right to utilise any basic payment scheme entitlements attached to the said lands*”. The Commissioner is satisfied that the Appellant granted the Company a Licence to utilise the BPS entitlements.
26. Additionally, the Commissioner notes that it is not in dispute that the BPS entitlement payments were paid to the bank account of the Company, rather than the Appellant. The Commissioner has had due regard to the bank account statements of the Company, included in the Respondent’s bundle of documents at page 87, evidencing that the various payments were made to the Company’s bank account by the DFAM.

The right to the BPS Entitlements

27. Aside from the person that was in receipt of the BPS entitlement payments, the Commissioner must consider whether the Company, as contended for by the Appellant, held the BPS entitlements. The Commissioner has considered the Regulation and the definitions of “*Farmer*” and “*agricultural activity*” as provided for in Article 4 of the Regulation. The Commissioner is satisfied as aforesaid that the Company was a “farmer” and was carrying on “agricultural activity” within the meaning of article 4 of the Regulation. The Commissioner finds as a material fact that the Company was the farmer carrying on agricultural activity. Further, it was not in dispute that the Company was an “*Active farmer*” in accordance with Article 9 of the Regulation.
28. The Appellant states that the Company was the holder of a registered herd number. The Appellant’s testimony was that the herd numbers of both he and his brother were amalgamated shortly after the Company was established. Notwithstanding his evidence as to the amalgamation of herd numbers, the Appellant confirmed that he had no contemporaneous documentation to support said herd numbers being amalgamated and attributed to the Company, as it relates to events nearly 18 years ago. The Respondent proposed that documentation relating to the herd number could have been requested from

the DFAM to support the Appellant's contention, had the Appellant made such a request to the DFAM. The Commissioner accepts the Appellant's evidence that he did not have documentation relating to an amalgamation of herd numbers as it occurred some 18 years ago. Nevertheless, the Commissioner is satisfied that in all likelihood the Appellant would have other more recent documentation relating to the herd number being that of the Company's, given its relevance in relation to the farming trade.

29. The Respondent has directed the Commissioner to the BPS Transfer of Entitlements 2018 Terms and Conditions ("the terms and conditions"). The terms and conditions state that *"the transfer of payment entitlements is implemented pursuant to EU Regulation 1307/2013 and is operated by DFAM"*. Whilst the terms and conditions are dated 2018, the Respondent confirmed to the Commissioner that the terms and conditions are similar for each year. Of note, are the following terms and conditions namely:-

1. *"Basic Payment Scheme Entitlements may only be transferred to an active farmer in the same Member State...."*
2. *The Transferor and Transferee must apply to transfer entitlements by completing the online Transfer of Entitlements application.*
3.
4.
5. *Entitlements may be leased with or without land.*
6. *Leased or rented entitlements will revert to the transferor at the end of the relevant scheme year. The reversion of entitlements on expiry of a lease or rental agreement is not considered a form of transfer".*

30. The Commissioner is satisfied that the said terms and conditions dictate the manner in which BPS entitlements are to be transferred and that the terms and conditions largely reflect the Regulation. From open source information, the Commissioner notes that there are various forms available to the holder of BPS entitlements to enable the transfer of BPS entitlements to take place². Moreover, the Commissioner notes that it is envisaged that the BPS entitlements are capable of being leased or rented. While the Guidelines do not expressly state that entitlements may be transferred by a Licence, they do envisage them being transferred by a form of "rental" other than a Lease. The Commissioner is satisfied that a Licence of entitlements is a "similar type of transaction" to a Lease. Nonetheless,

² <https://www.gov.ie/en/service/3f1f2-transferring-farm-entitlements/#how-to-apply-to-transfer-entitlements>

the Commissioner is satisfied that the Lease or rental of BPS entitlements still requires a formal transfer to take place, in accordance with the aforementioned forms.

31. In light of the terms and conditions, it seems that the Company would have been prima facie entitled to be registered by the DFAM as the transferee of the BPS entitlements owned by the Appellant, the transferor. However, notwithstanding that the Company may have been entitled to be registered as transferee, the evidence suggests that the Appellant did not take any steps to effect such a registration.
32. Whilst the evidence of the Appellant was that there was an error on the application form submitted by the Teagasc representative, such that it was the Company who was the person entitled to the BPS entitlements, the Appellant's Agent in writing confirmed to the Respondent by letter dated 13 December 2019, that the BPS entitlements were not transferred by the Appellant to the Company. The Commissioner has considered the contents of said correspondence and considers it useful to set out the relevant paragraph herein and which states "*While [REDACTED] did not transfer the entitlements into [REDACTED] name from his own, this attached licence included the right to utilise any basic payment entitlement attached to the said lands. These entitlements had to be fully used by the licensee along with the lands or they would be lost. The income from the basic payment scheme is contractually that of [REDACTED] therefore no changes to the 2016 & 2017 tax return for either [REDACTED] or [REDACTED] are required*".
33. The Commissioner has considered the decisions relied on by the Respondent. The Commissioner has also had regard to the Appellant's arguments why the decisions relied upon by the Respondent should be distinguished from the circumstances of the Appellant's appeal. The Commissioner is in agreement that both the Determination in 79TACD2021 and the decision in *J D Dolan (Inspector of Taxes) v "K" National School Teacher* can be distinguished from the within appeal, such that in the within appeal the payments were made to the Company's bank account and no transfer of payments occurred from the Appellant to the Company. However, of note is page 475 of that decision wherein Maguire P. cites a number of cases which "*establish the proposition that the mode of application of profits does not affect the liability to pay tax*".
34. The Commissioner listened to the testimony of the Appellant, whereby he stated that it was an error on the part of the Teagasc representative who filled out the form and that it should not have reflected his name and that of his brothers, but rather the name of the Company. Nevertheless, the correspondence from the Appellant's Agent states in no uncertain terms that the Appellant did not transfer the BPS entitlements and was relying on the Licence Agreement to utilise same. The correspondence states that the income

from the BPS is contractually that of the Company. Again of note, in *J D Dolan (Inspector of Taxes) v "K" National School Teacher*, the argument that as the Nun was contractually obliged to hand over her salary to the Order, it meant that she had no beneficial interest in the money, was merely a trustee and as such, was not taxable, was specifically rejected by Maguire P. He stated that while she is bound to hand over her salary to the Order, this does not affect her liability to pay income tax on her salary.

35. Having considered the facts and circumstances of this appeal, together with evaluation of the documentary and oral evidence, as well as the submissions from both Parties, the Commissioner concludes that the entitlement to receive the BPS entitlement payment was at all material times registered in the name of the Appellant. The Appellant duly applied for such payments in his name and that of his brothers and it matters not that the payment was made to the bank account of the Company. The evidence supports the view that it was not the Company that held the BPS entitlements. In addition, the Appellant had at all material times the benefit of legal advice in relation to the Licence Agreement, a Tax Agent and the support of a Teagasc representative. The Commissioner considers that there is a responsibility on the Appellant to ensure the accuracy of any forms submitted to the DFAM for the receipt of BPS entitlements. Therefore, the Commissioner can only conclude that the forms were not submitted in error. Consequently, Commissioner accepts as correct the submission by the Respondent that the BPS entitlement payments received by the Company, were income received by the Appellant, notwithstanding the existence of the Licence Agreement.
36. In relation to the herd number being attributed to the Company, the Commissioner has set out above that evidence to support this contention was not submitted by the Appellant and whilst the Appellant's testimony was that the Company was the person entitled to the payment, as the Appellant was no longer the farmer engaged in farming activities, the Commissioner is satisfied that the legal entitlement to the BPS payment remained with the Appellant and not the Company. The Commissioner considers that there was no evidence submitted by the Appellant to establish that the herd number was that of the Company. The Commissioner would have expected to see such a document in support of the Appellant's appeal. Despite this set of circumstances, the Commissioner does not propose to make a finding in relation to the eligibility or not of the Appellant to receive such a payment, having regard to the criteria as set out in the Regulation. It is the Commissioner's role in the within appeal to determine the tax payable.
37. Accordingly, the Commissioner is satisfied that the Appellant has not succeeded in establishing on balance that the Respondent was incorrect to raise the Notices of

Amended Assessment. The evidence, in particular the correspondence of the Appellant's Agent dated 13 December 2019, shows that the BPS entitlements were not transferred to the Company and that the Appellant was relying on said Licence Agreement. As set out above, the Commissioner does not accept that this establishes the Company as the recipient of the income for tax purposes.

38. The Appellant's Agent mentioned that the charge to income tax in the Notices of Amended Assessment are the aggregate of entitlements for both brothers and not just the Appellant's alone. Nevertheless, there no evidence was submitted by the Appellant to show that the Notices of Amended Assessment were incorrect in this regard nor any evidence to show what the apportionment should be. Hence, the Notices of Amended Assessment to Income Tax shall stand. Should the Appellant have additional documentation to support this contention, he should engage with the Respondent accordingly.

Determination

39. As such and for the reasons set out above, the Commissioner determines that the Appellant has not succeeded in his appeal and accordingly, the Notices of Amended Assessment to Income Tax for the years 2016 and 2016, the subject of this appeal, shall stand.
40. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to check to see whether his legal rights were correctly applied.
41. This appeal is hereby determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.


Claire Millrine
Appeal Commissioner
23 December 2022